

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

FOR MR. JUSTICE VAN ORSDEN.

TRANSCRIPT OF RECORD.

Court of Appeals of the District of Columbia.

OCTOBER TERM, 1920.

No. 3400.

655

GARFIELD PRELEAU, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED MAY 10, 1920.

PRINTED SEPTEMBER 2, 1920.

argued Jan, 3/92

Court of Appeals of the District of Columbia.

OCTOBER TERM, 1920.

No. 3400.

GARFIELD PRELEAU, APPELLANT,

vs.

THE UNITED STATES, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

INDEX.

	Original.	Print.
Caption	<i>a</i>	1
Indictment	1	1
Motion of Garfield Prioleau to quash indictment.....	3	2
Arraignment; plea not guilty.....	5	3
Motion to quash.....	5	4
Affidavit for the defendant.....	6	4
Plea of not guilty withdrawn; motion to quash indictment over- ruled; plea not guilty entered; jury sworn and respited; ver- dict guilty on first count of the indictment, not guilty on sec- ond count thereof; amount of bond increased.....	9	6
Motion for new trial.....	10	6
Affidavit of defendant with motion for a new trial.....	12	7
Motion for an arrest of judgment.....	14	8
Affidavit of Carson Alexander.....	15	9
Affidavit of Garfield Prioleau upon motion for a new trial....	16	10
Motion for a new trial overruled; sentence.....	16	10
Appeal noted <i>nunc pro tunc</i>	17	11
Memorandum: Bond on appeal approved and filed.....	17	11
Order making bill of exceptions part of record.....	17	11
Assignments of error.....	18	11

	Original.	Print.
Designation of record.....	18	11
Affidavit of Aaron P. Prioleau.....	20	12
Memorandum as to certain members of petit jury.....	21	12
Memorandum: Time to file transcript of record extended.....	21	13
Clerk's . certificate.....	22	13
Bill of exceptions.....	23	13
Testimony of John W. Godfrey.....	24	14
George White.....	25	15
Nathaniel Watson.....	25	15
William Robinson.....	25	15
Charles A. Gross.....	27	16
William Thomas.....	28	16
Edward Thomas.....	29	17
Joseph Grant.....	29	17
Frank M. Alligood.....	32	19
Warren O. Embrey.....	32	20
Howard O. Vermillion.....	33	20
Garfield Preleau.....	34	21

Court of Appeals of the District of Columbia.

No. 3400.

GARFIELD PRELEAU, Appellant,

vs.

THE UNITED STATES.

a Supreme Court of the District of Columbia.

Criminal. No. 35394.

THE UNITED STATES, Plaintiff,

vs.

GARFIELD PRELEAU, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above entitled cause, to wit:

1 *Indictment.*

Filed in Open Court August 5, 1919. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a
Criminal Term, April Term, A. D. 1919.

DISTRICT OF COLUMBIA, ss:

The Grand Jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

That one Bernard Stewart, one William Thomas, one Edward Thomas, one Garfield Preleau, and one John Jackson, each late of the District of Columbia aforesaid, on, to wit, the seventh day of June, in the year of our Lord one thousand nine hundred and nineteen, and at the District of Columbia aforesaid, by force and violence, and by sudden and stealthy seizure and snatching, and by putting

in fear, and against resistance, feloniously did steal, take and carry, from and out of the immediate actual possession of one John W. Godfrey, then and there being, one automobile, of the value of three thousand two hundred dollars, of the goods, chattels and property of the said John W. Godfrey; against the form of the statute in such case made and provided, and against the peace and government of the United States.

Second count. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

2 That the said Bernard Stewart, the said William Thomas, the said Edward Thomas, the said Garfield Preleau, and the said John Jackson, on, to wit, the said seventh day of June, in the year of our Lord one thousand nine hundred and nineteen, and at the District of Columbia aforesaid, a certain automobile, the property of the said John W. Godfrey, then and there being, feloniously and unlawfully did take, use, operate and remove, and cause to be taken, used, operated and removed, from a certain street, there situate, without the consent of him, the said John W. Godfrey, the owner thereof; and did then and there feloniously and unlawfully operate and drive, and cause to be operated and driven, the said automobile, for the profit, use, and purpose of them, the said Bernard Stewart, the said William Thomas, the said Edward Thomas, the said Garfield Preleau, and the said John Jackson; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

JOHN E. LASKEY,

*Attorney of the United States in and
for the District of Columbia.*

(Endorsed:) Criminal No. 35394. United States vs. (1) Bernard Stewart, (2) William Thomas, (3) Edward Thomas, (4) Garfield Preleau, and (5) John Jackson. Robbery, Violation Sec. 826-b, D. C. Code. Witnesses: John W. Godfrey, Lillie King, William Robinson, Joseph Grant, M. P. A True Bill. Otto J. De Moll, Foreman.

3 *Motion of Garfield Prioleau to Quash Indictment.*

Filed in Open Court January 13, 1920. J. R. Young, Clerk.

* * * * *

And now comes Garfield Prioleau, one of the defendants in the above entitled cause, in his own proper person and moves the court to set aside and quash the indictment herein against him upon the following grounds:

1. That the defendant says the grand jury which found and presented the bill of indictment against him in this trial court are not his peers and a trial on the said bill of indictment is a denial of trial by jury within the meaning of the common law, of the equal protection of the law and of due process of law as to this defendant as

guaranteed to him under the Fourteenth Amendment of the Federal Constitution.

2. The defendant further says to the court that he has reasons to believe and does believe that the charge that is now made against him by the prosecuting witness for the District of Columbia is a case of persecution, conspiracy and prejudice to deprive this defendant of his citizenship and rights by incarcerating him in prison, and that there are certain officers of the police and detective department of the District of Columbia whom he has reason to believe are prejudiced against him for they have arrested the defendant five different times during the year and held him in prison for weeks and then released him, after failing to prove any case of crime against him, and that the case at bar is one of the same kind of persecution, conspiracy and prejudice, and that the said police and detective officers have cuffed, threatened and beat the defendant time and again to

4 force him to sign matters that they wrote as his statement an admission of guilt. All of which we are ready to verify by witnesses' affidavits and the record of the detective and police department of the District of Columbia.

GARFIELD PRIOLEAU.

DISTRICT OF COLUMBIA, ss:

Personally appeared before me, Garfield Prioleau, who being duly sworn, *sahe* he is the defendant mentioned in the foregoing motion, that the statements are true of his own knowledge, except as to those which are stated on belief, and as to those he believes to be true.

GARFIELD PRIOLEAU.

Sworn to and subscribed before me this 13 day of Jan., 1920.

OLLIE M. COOPER,
Notary Public, D. C.

5 Supreme Court of the District of Columbia

Saturday, October 18, A. D. 1919.

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford presiding.

* * * * *

Come as well the Attorney of the United States, as the defendant in proper person, in custody of the Superintendent of the Washington Asylum and Jail, and by his Attorney G. Prileau, Esquire; whereupon, the defendant being arraigned upon the indictment, the reading whereof he specifically waives, pleads Not Guilty thereto, and for trial puts himself upon the country and the Attorney of the United States doth like.

Motion to Quash.

Filed in Open Court Jan. 13, 1920.

* * * * *

And now comes Garfield Prioleau, one of the defendants in the above entitled cause, in his own proper person, and moves the court to set aside and quash the indictment herein against him on the following grounds:

1. That the defendant says the jury which formed to try the defendant in this trial court are not his peers and a trial before the said jury is a denial of trial by jury within the meaning of the common law, or of the equal protection of the law and of due process of law as to this defendant as guaranteed to him under the Fourteenth Amendment to the Federal Constitution.

6 2. That the defendant is an Africo-American descendant, commonly known as a Negro, and that the prosecuting witness of the government is of the Caucasian race, commonly known as white man, and that the jury selected to try the defendant at bar are of the Caucasian race, commonly known as white men, and a trial of the defendant in this trial court by the said jury selected are not of the peers of the defendant, and that it is a denial of trial by jury within the meaning of the common law to this defendant as guaranteed to him under the 14th Amendment to the Federal Constitution.

3. Therefore the Defendant does not believe that he can get a fair and impartial trial in this trial court for the causes herein alleged in the premises as shown, and he herein appeals to the honorable court for relief by quashing said indictment or for any other remedy that the court may consider meet and just.

In witness whereof said party has set his hand this 13 day of January 1920.

GARFIELD PRIOLEAU.

Subscribed and sworn to before me this 13 day of January 1920.

[SEAL.]

OLLIE M. COOPER,

Notary Public, D. of C.

Affidavit for the Defendant.

Filed in Open Court Jan. 13, 1920.

* * * * *

UNITED STATES OF AMERICA,

District of Columbia, ss:

7 Personally appeared before me, Aaron P. Prioleau who being duly sworn, deposes and says: That the deponent well knows the defendant in the above entitled cause; that deponent also knows the prosecuting witness, and that the said prose-

cuting witness of the Government is of the Caucasian race, commonly known as the white race, and that the Grand Jurors who presented the indictment against the defendant are of the same nationality, and that the defendant being of Afro-American descent, commonly known as Negro, said jurors are not his peers, and a trial of the defendant at bar under said indictment will deprive him of a trial by a jury of his peers, and by due process of law equal protection as guaranteed to him under the Fourteenth Amendment of the Federal Constitution.

That the deponent alleges that the defendant at bar was arrested by the Police and detective departments of the District of Columbia five different times during the year 1919 and held in prison for weeks each time by the said official officers of said departments upon charges of crimes that he had not committed, as the record of said department will show. Each of said charges was proven to be false imprisonment, and there was danger against the defendant's life and liberty had they found evidence to hold the defendant for trial.

The deponent further says to the court that he has reasons to believe, and that he does believe, that the case at bar against the defendant links with chains of persecution, conspiracy and prejudice against the defendant to hold him in prison and servitude, and to deprive the defendant of his freedom, rights and privileges, as an American citizen, by incarcerating him in the said prison.

8 The defendant further says that defendant was out on bond upon this alleged charge, and one of the Police Department, wilfully charged the defendant with attempting to kill him, and had the defendant jailed. The deponent believes that this charge was made against the defendant to imprison him by breaking his bond, and his bondsman would turn him in, which the bondsman did. And the defendant had to stay in jail three months, while his bondsman was paid to give him freedom by the action of an official of the Police Department. And that the deponent was forced, on account of the said action of the police and detective officials, to pay one hundred (\$100.00) dollars the second time for a new bondsman, on the 31st day of December, 1919, to get the defendant out of jail, as he was suffering and was sick, being in three months wrongfully by these various actions of the police and detective officials.

That the defendant had informed the deponent, being his father, that the police and detective in their department would cuff, threaten and beat him, to force him to sign a statement of confession of a crime that he was not guilty of.

The deponent is led to believe by his own information and knowledge that the case at bar is persecution for prejudicial purposes and a conspiracy, planned by these officials to incarcerate the defendant in prison and to deprive him of freedom and his citizenship.

AARON P. PRIOLEAU.

Subscribed and sworn to before me this 13 day of January, 1920.

[SEAL.]

OLLIE M. COOPER,
Notary Public, D. C.

Supreme Court of the District of Columbia.

Tuesday, January 13th, A. D. 1920.

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford presiding.

* * * * *

Come as well the Attorney of the United States, as the defendant in proper person, according to his recognizance, and by his Attorney A. P. Prileau, Esquire; and thereupon leave of Court first being obtained, the defendant withdraws his plea of Not Guilty heretofore entered in this case; whereupon the said defendant by his said Attorney files a motion to quash the indictment herein; and thereupon the said motion after being argued is by the Court overruled; whereupon the defendant being arraigned upon the indictment the reading whereof he specifically waives, pleads Not Guilty thereto, and for trial puts himself upon the country and the Attorney of the United States doth the like; whereupon leave of Court first being had the defendant again withdraws his plea of Not Guilty heretofore entered, and files a motion to quash the indictment in this case; and thereupon the said motion after being argued is by the Court overruled; whereupon the defendant being arraigned upon the indictment the reading whereof he specifically waives, pleads Not Guilty thereto, and for trial puts himself upon the country and the Attorney of the United

States doth the like; and thereupon comes a jury of good and
10 lawful men of the District of Columbia, to wit: James E.

Alexander, James F. Birch, William A. Hill, John H. Taylor, William J. Armstrong, Samuel D. Frazier, David J. Kaufman, John F. West, Raymond J. Augusterfer, Isaac Herman, Randolph Mason, William E. Wilson, who, being sworn to well and truly try the issue joined herein, upon their oath say that the defendant is Guilty in manner and form as charged in the First Count of the Indictment; and the said jury upon their oath say that the defendant is Not Guilty on the Second Count of the Indictment; whereupon it is considered by the Court that the said defendant go thereof without day as to the Second Count of the Indictment; and thereupon the Court increases the amount of bail in this case to Ten thousand (\$10,000) dollars, in default of which the said defendant is committed to the Washington Asylum and Jail.

Motion for New Trial.

Filed Jan. 24, 1920.

* * * * *

Now come the defendants in the above entitled cause by his attorney and guardian, and motions the court for a new trial upon the following ground:-

1. That the Jury erred in finding the defendant guilty.
2. That neither the prosecuting witness, John W. Godfrey, nor any of the witnesses for the Government testified or claimed
11 the defendant was anywhere near the car that is said to have been taken or stolen, as alleged in the bill of indictment, upon either of the counts that the defendant was tried upon, and the Judge was asked to charge the Jury upon this fact but he did not.
3. That the said verdict is contrary to the indictment and the law and evidence presented in said case.
4. That the court erred by refusing to quash the bill of indictment and instruct the Jury on the law, and to find a verdict for the defendant.
5. That the defendant was denied and deprived of his rights and privileges under the 5th Article of the Federal Constitution, and the 14th Amendment to the said Constitution and the laws of the United States thereunder, and as to a trial by jury of his Peers.
6. That the defendant discovered new evidence that will show that the charges he alleges in his affidavits were conspiracies inspired by prejudice and other causes placed against him by certain officers of the Police and Detective Departments to incarcerate the said defendant in prison, and that the refusal of the court to accept the \$2,000 bond already given until the new trial or appeal affected, and increase the said bond to \$10,000, shows the intention of the court to impose an unreasonable bail to hold the defendant in prison.

All of which is respectfully submitted to the Honorable Court for the relief therein or any other remedy the Court may deem meet, right and just in the premises.

JACOB MOORER,
Attorney.
A. P. PRIOLEAU,
Gu-rdi-ne, for Def't.

12 *Affidavit of Defendant with Motion for a New Trial.*

Filed January 24, 1920.

* * * * *

Personally appeared before me Edw. F. Harris a Notary Public in and for the District of Columbia, Garfield Prioleau, who being first duly sworn in accordance to law, deposes and says that he is one of the defendants in the above entitled cause and that the verdict of the jury in said cause was a miscarriage of justice and contrary to the law, and evidence as produced at the trial. That the chief prosecuting witness, one John W. Godfrey, the owner of the automobile as alleged stolen in the indictment of the above entitled cause, testified that at the time of the robbery he did not see the affiant and that Edward Thomas and William Thomas, two of the other defendants, who plead- guilty to the charge, testified that one Bernard Stewart and one John Jackson took the said automobile and that the affiant, Garfield Prioleau was not present and knew nothing of said robbery

as named in the said indictment. That the affiant had hired the automobile in which he remained, from one William Robinson for the purpose of touring his own automobile from the corner of 2nd and "H" Streets, S. W., to a repair shop and en route the said Robinson and the affiant met the other defendants who hired Robinson to drive them in and about the city. That said Robinson, being a witness for the Government at the trial, testified that he was near the scene of the alleged robbery and that the affiant was at all times with him and did not take part in and neither was he aware of the

13 said robbery, but at which time was sleeping in the said hired automobile and therefore did not see the stolen automobile.

That the police nor the detective in the case placed the affiant as having knowledge or part in the robbery aforesaid. That the Bill of Indictment alleges that the defendant Prioleau "with force, threat and violence stole" the said automobile for the said John W. Godfrey at the value of three thousand two hundred dollars (\$3,200.00). That the testimony of the said Godfrey is *cooperated* by the said defendants, Edward Thomas and William Thomas and also the said Robinson. The affiant is also *cooperated* by the said Thomas and Robinson that his, the affiant's car was disabled at 2nd and "H" Sts. S. W., and that the defendants, Stewart, Jackson Edward Thomas and William Thomas did hire Robinson also to drive them about the city. That the affiant is now being held in prison contrary to law and evidence and that his bond is unreasonable and contrary to the 5th and 8th Article- of the Federal Constitution, and the 14th Amendment thereto.

GARFIELD PRIOLEAU,
Affiant.

Subscribed and sworn to before me this 16th day of January, A. D. 1920.

[SEAL.]

EDW. F. HARRIS,
Notary Public, D. C.

14 *Motion for an Arrest of Judgment.*

Filed January 24, 1920.

* * * * *

Now comes the defendant in the above entitled cause by his attorney and guardian, and moves the Court for an arrest of Judgment upon appeal to the Court of Appeals of the District of Columbia, from the judgment of the Court in this trial, upon the grounds:

1. That the Court erred in the refusing the arrest of Judgement and to grant a new trial.

2. That the Judgement of the Court is contrary to the law and evidence as there was no evidence to substantiate the Bill of Indictment in this cause.

3. That the defendant has been denied and deprived of his rights under the 5th, 6th, and 14th Amendments to the Federal Constitution, and laws thereunder.

JACOB MOORER,
A. P. PRIOLEAU,
Attorney and Guardian for Defendant.

15

Affidavit of Carson Alexander.

Filed Jan. 24, 1920.

* * * * *

DISTRICT OF COLUMBIA, ss:

Personally appeared before me Benjamin F. Lindas a Notary Public in and for the District of Columbia, Carson Alexander and made oath that he knows the defendant, Garfield Prioleau and that on the 6th day of June, 1919, the said defendant was at his house and that he drove his automobile to his home and that the said automobile caught afire and that he, the affiant, helped the defendant to extinguish the fire on said car and that the defendant went to hire a man to tour his automobile to a repair shop. And that when he returned he was in an automobile with a man named William Robinson early in the morning of the 7th day of June, 1919, and asked the affiant to direct them to Bernard Stewart's house where they went, returned and took the defendant's automobile to a repair shop. That they told him that they were out all night. He further says that he knows of his own personally knowledge that the Detective and Police Departments of the District of Columbia have arrested Garfield Prioleau, the defendant, on five (5) separate occasions during the year 1919 and held him in prison upon false charges for weeks. That two (2) of the alledged charges were for attempt to kill and that the last charge was by one ———, police, who he believes conspired to get the said defendant back in jail and that the charge turned out to be false.

CARSON ALEXANDER,
Affiant.

Subscribed and sworn to before me this 23 day of Jan., 1920.

[SEAL.]

BENJAMIN F. LINDAS,
Notary Public, D. C.

16 *Affidavit of Garfield Prioleau Upon Motion for a New Trial.*

Filed January 29, 1920.

* * * * *

DISTRICT OF COLUMBIA, ss:

Personally appeared before me Theodore L. Cogswell a Notary Public in and for the District of Columbia, aforesaid, Garfield Prioleau and made oath that he is a defendant in the above entitled cause and that he has discovered new evidence which he could not produce at the trial on January 6, 1920.

GARFIELD PRIOLEAU,
Def't.

Subscribed and sworn to before me this 24th day of January, A. D. 1920.

[SEAL.]

THEODORE L. COGSWELL,
Notary Public, D. C.

Supreme Court of the District of Columbia.

Saturday, February 7th, A. D. 1920.

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford presiding.

* * * * *

Come as well the Attorney of the United States as the defendants in proper person, in custody of the Superintendent of the Washington Asylum and Jail, and Garfield Prioleau by his Attorney, A. R. Prioleau Esquire; whereupon the defendant Garfield Prioleau's motion for a new trial coming on to be heard, after argument, is by the Court overruled; whereupon it is demanded of the defendants what further they have to say why the sentence of the law should not be pronounced against them, and they say nothing except as they
17 have already said; whereupon it is considered by the Court that for their said offense, the said defendants be taken by the Superintendent aforesaid, to the Asylum and Jail, aforesaid, whence they came, thence to the Penitentiary (as designated by the Attorney General of the United States) there to be imprisoned for the period of Ten (10) years each, to take effect from and including this date.

Friday, February 13th, A. D. 1920.

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford presiding.

* * * * *

Now comes the defendant herein by his Attorney A. P. Prileau, Esquire; whereupon the defendant notes an appeal nunc pro tunc in open Court from the judgment of the Court in this case on the 7th day of February 1920.

Memorandum.

March 3, 1920.—Bond on Appeal approved and filed.

Supreme Court of the District of Columbia.

Wednesday, March 17th, A. D. 1920.

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford presiding.

* * * * *

Now comes the defendant by his Attorney, A. R. Preleau and submits to the Court his Bill of Exceptions, taken during the trial of the case, and prays the Court to sign and make a part of the record, which is accordingly done.

18

Assignments of Error.

Filed in Open Court March 23, 1920.

* * * * *

1. The Court erred in overruling defendant's Motion to Quash the indictment.

2. The Court erred in overruling defendant's Motion for a New Trial.

3. The Court erred in overruling defendant's Motion in Arrest of Judgment.

4. The Court erred in refusing to direct a verdict for the defendant, as prayed by defendant's counsel.

A. P. PRIOLEAU.
JOSEPH H. STEWART.
THOMAS BECKETT.

Designation of Record.

Filed March 23, 1920.

* * * * *

The Clerk will please prepare a transcript of the record in the above entitled cause for use upon the appeal taken by Garfield Prioleau to the Court of Appeals of the District of Columbia.

And the said Garfield Prioleau, appellant, hereby designates as the parts of the record to be included in the said transcript as suffi-

cient for the determination of the questions to be presented upon said appeal, the following, to wit:

1. Indictment.
2. Motion to quash action of the Grand Jury.
3. Affidavit of Aaron P. Prioleau.
4. Motion for new trial.
- 19 5. Affidavit of Carson Alexander.
6. Affidavit of Garfield Prioleau.
7. Affidavit of Garfield Prioleau.
8. Motion by Garfield Prioleau to quash indictment upon form of petit jury.
9. Memo. as to certain members of the jury.
10. Motion in arrest of judgment.
11. Order overruling same.
12. Affidavits of Aaron P. Prioleau.
13. Bill of Exceptions.
14. Assignment of Errors.
15. This Designation of Record.
16. Memo: Extension of time to file transcript of record.

JACOB MOORER,
A. P. PRIOLEAU,
Attorney & Guardian.

20

Affidavit of Aaron P. Prioleau.

Filed March 24, 1920.

* * * * *

Personally appeared before me, Ollie M. Cooper, a Notary Public for the District of Columbia, Aaron P. Prioleau, who being duly sworn, deposes and says that he is the father and guardian of the defendant in the above entitled cause, and that he called upon the jailer, C. C. Foster, the Superintendent of said Jail, for his son, Garfield Prioleau, and that he was informed that the defendant in the said above cause was sent to the Penitentiary at Atlanta, Georgia, to serve a sentence of ten (10) years; and that an appeal to the Court of Appeals is now pending in the said cause.

AARON P. PRIOLEAU.

Subscribed and sworn to before me this 22nd day of March, 1920.
[SEAL.]

OLLIE M. COOPER,
Notary Public, D. C.

21

Memo. as to Certain Members of the Petit Jury.

Filed in Open Court April 14, 1920.

* * * * *

Be it remembered that the three following named jurors, to wit: John H. Taylor, John F. West, and Randolph Mason, sworn in the

above entitled case, are colored men, and of the same race as the defendant.

JOHN R. YOUNG,
Clerk,

By W. F. LEMON,
Assistant Clerk.

Memorandum.

April 26, 1920.—Time in which to file transcript of record extended to, and including, May 15, 1920.

22 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 21, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 35394 wherein The United States is Plaintiff and Garfield Preleau is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 10th day of May, 1920.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG,
Clerk,

By W. E. WILLIAMS,
Assistant Clerk.

23 In the Supreme Court of the District of Columbia, Holding a Criminal Term.

Criminal. No. 35394.

UNITED STATES

vs.

GARFIELD PRELEAU.

Be it remembered, that on the thirteenth day of January, A. D. 1920, the issues joined upon the indictment in the above-entitled cause came on for trial before the Honorable Wendell P. Stafford, Associate Justice, Supreme Court of the District of Columbia, and that thereupon the defendant filed in open court a motion to quash the indictment in the cause, on the ground that the Grand Jury which returned the indictment was not composed of peers of the de-

fendant, because the defendant was a negro and not all the Grand Jurors were negroes; which said motion was overruled by the Court, to which said action of the Court the defendant noted an exception.

Thereupon, defendant challenged the array of petit jurors, on the ground that they were not the peers of the defendant because the defendant was a negro and not all of the petit jurors were negroes, which said challenge was denied by the Court, and to this action of the Court in denying the challenge the defendant by his counsel thereupon duly noted an exception.

Thereupon, twelve of said panel of petit jurors were sworn as jurors to try the issue; whereupon the defendant filed in open court a motion to quash the indictment on the ground that the jury selected in this trial of the defendant with three exceptions were not the peers of the defendant, because the defendant was a negro and not all of the petit jurors were negroes; which said motion was also overruled by the Court, to which action of the Court the defendant duly noted an exception.

And thereupon, the United States, in order to maintain the issues on its behalf joined, offered the following evidence:

24 JOHN W. GODFREY, white, 307 S Street, S. E., a witness on behalf of the United States, testified in substance as follows:

"About 6:00 o'clock A. M., June 7, 1919, I was coming from Baltimore with a party of friends in my automobile; it was a Cole automobile, my property, of the value of \$3,200. George White, white, was in the automobile with me. I was driving the automobile. When I was coming through an alley at New Jersey Avenue and Q Street, Northwest, in the District of Columbia, I was held up by a gang of colored men; there were about seven of them; this alley is called Franklin Street. A number of these colored men had pistols; they pointed pistols at me and ordered me to stop, which I did. They then took from me about \$600 in cash, and 19 cases of whiskey, valued at about \$750; ordered me and White to get out of my automobile. The money and whiskey was my property. White and I got out of the automobile. The gang of colored men then drove away in my automobile, taking my automobile, my money and my whiskey. They kept me covered with their pistols until I got out of sight.

This gang of men drove up in an automobile that had red wheels or red tires. Four or five men got out of the automobile. The others remained in the automobile. I did not see who the men were in the automobile. I reported the matter to the police, and described the red wheels or red tires.

Later I saw my automobile after it had been recovered by the police.

"That man there," (indicating William Thomas, colored), and that man there," (indicating Edward Thomas, colored), are two of the men that were in the gang that held me up."

"That man there," (indicating the defendant Garfield Preleau), I did not see there at the time."

25 GEORGE WHITE, white, 307 S Street, N. E., called as a witness on behalf of the United States, testified in substance the same as the above named witness.

NATHANIEL WATSON, colored, 1506 Twenty-sixth Street, N. W., called as a witness on behalf of the United States, testified in substance, that at about 5:00 o'clock A. M., June 6, 1919, the defendants Garfield Preleau, William Thomas, Edward Thomas, Bernard Stewart, John Jackson, William Robinson, all colored, came to a gasoline station where he was employed at New Jersey Avenue and Franklin Street, N. W., and purchased some gasoline; that these men were in Robinson's automobile; that this automobile has red tires or red wheels; and the defendant Garfield Preleau paid for the gasoline.

WILLIAM ROBINSON, colored, called as a witness on behalf of the United States, testified in substance as follows:

That about 6:00 o'clock P. M., June 6, 1919, (the evening before the robbery) he was driving his automobile at 7th Street and Florida Avenue, N. W.; that his automobile has red wheels; that at 7th St. and Fla. Ave., he met the defendant Garfield Preleau; that the defendant asked him to go down southwest, and pull in his (defendant's) automobile from 2nd and H Streets, S. W.; that defendant told him that his (defendant's) automobile had caught fire; that defendant Garfield Preleau got in his (Robinson's) automobile, and they started down to the southwest, and at 3d and H Streets, S. W., met William Thomas, colored, Edward Thomas, colored, Bernard Stewart, colored, John Jackson, colored; that these men came over to the automobile in which witness and Garfield Preleau were; that Garfield Preleau and these men talked together; that these men then got in the automobile with Robinson and defendant Preleau; that the men were talking about looking for a man bringing whiskey into the city, and told Robinson to drive around town until they

26 found a man bringing whiskey into the city; that he drove them around over the city; that they said they were looking for a liquor man to take his whiskey from him; that about 5:00 o'clock in the morning they went to a gasoline station on New Jersey Avenue, where defendant Garfield Preleau bought some gasoline from Nathaniel Watson; that shortly after getting the gasoline they saw a large automobile; that one of the men in Robinson's automobile said, "There's the liquor man now;" that all the men in the car talked about holding up this liquor man and taking his whiskey; that they told him to stop, and that Garfield Preleau and himself remained in the automobile, and that Bernard Stewart, and William Thomas, and Edward Thomas, and John Jackson got out of the automobile; that a few minutes afterward he saw the automobile going down towards the southwest; and that the defendant Garfield Preleau told him to follow the automobile going southwest; he said that he and Garfield Preleau then drove down to 912 First Street, S. W., the residence of Lillie King, colored; that Garfield Preleau told him to stop here; that he and Garfield Preleau went into Lillie

King's house and there they met Bernard Stewart, William Thomas, Edward Thomas and John Jackson, the men who had come up with them in Robinson's automobile to Franklin Street; that he left defendant Preleau and William Thomas at Lillie King's house, and that witness and Edward Thomas, and Bernard Stewart and another boy went out in Robinson's automobile and sold part of the liquor; that at the house one of the men who had been in the automobile with him (not defendant Garfield Preleau) told him that they had abandoned the Cole Car somewhere in southeast Washington; that they received altogether about \$768 for the whiskey that they sold, which they divided among them; that Garfield Preleau, the defendant, got \$110, and that the witness got \$110, and in addition \$25 for the use of his automobile.

27 The witness identified William Thomas and Edward Thomas as two of the men that were with him that night.

On cross examination the witness testified that at the time that Stewart and William Thomas and Edward Thomas and John Jackson held up Godfrey and robbed him of his automobile, his money and his whiskey, the defendant Garfield Preleau was lying on the seat of his (Robinson's) automobile on Franklin Street; that the defendant Garfield Preleau looked as if he were asleep; that the defendant Garfield Preleau never got out of the automobile at Franklin Street, and that the defendant Garfield Preleau did not take the automobile or the money or whiskey from Godfrey.

CHARLES A. GROSS, colored, called as a witness on behalf of the United States testified in substance as follows:

That in the forenoon of June 7, 1919, he was at Lillie King's house at 912 First Street, N. W., and there saw the defendant Garfield Preleau, Bernard Stewart, William Thomas, Edward Thomas, John Jackson and William Robinson; that they were dividing some money among themselves, and talking about having held up an automobile at Franklin Street and taking the automobile and some whiskey from a white man; that he did not hear them say anything about taking any money from the white man.

The witness identified the defendant Garfield Preleau as one of the men he saw on that occasion. Upon the conclusion of the testimony of this witness, counsel for the defendant moved that such testimony be stricken from the record on the ground that, as stated by counsel for the defendant, the witness was a stool pigeon, and therefore unworthy of belief. This motion the Court overruled, to which action of the Court, the defendant by his counsel then and there noted an exception.

28 WILLIAM THOMAS, colored, called as a witness on behalf of the United States, testified in substance as follows:

That he is one of the defendants who was jointly indicted with the defendant Garfield Preleau; and that he has pleaded guilty to the charge, and is now awaiting sentence; that on the morning of June 7, 1919, he and Edward Thomas and Bernard Stewart and John

Jackson, with revolvers, held up Mr. Godfrey, the white man, and took his automobile and whiskey; that Garfield Preleau and William Robinson were in William Robinson's automobile in Franklin Street at the time of the actual hold-up; that before the hold-up Bernard Stewart, Edward Thomas, Garfield Preleau, John Jackson and William Robinson, and the witness had been riding around town all night looking for a whiskey man to hold up; that after the hold-up, Bernard Stewart, Edward Thomas, John Jackson and the witness drove to Lillie King's house, in the southwest, in the white man's automobile; that the whiskey was put in Lillie King's house; that the white man's automobile was then abandoned in the southeast, and that after the whiskey was sold, the money was divided among Bernard Stewart, Edward Thomas, Garfield Preleau, John Jackson, William Robinson and the witness.

29 EDWARD THOMAS, colored, called as a witness on behalf of the United States, testified in substance as follows:

That he is the Edward Thomas who was jointly indicted with the defendant Garfield Preleau and William Thomas and Bernard Stewart and John Jackson, charged with having robbed Mr. Godfrey of his automobile; that he has pleaded guilty to this charge; that on the morning of June 7, 1919, at Franklin Street, Northwest, in the District of Columbia, he, and Bernard Stewart and William Thomas and John Jackson, with revolvers, held up Mr. Godfrey, a white man, and took from Mr. Godfrey his Cole automobile and eighteen or nineteen cases of whiskey, and took the automobile and the whiskey to Lillie King's house, at 912 First Street, Southwest; that they put the liquor in Lillie King's house and then abandoned the white man's automobile down in Southeast; that at the time of the hold-up the defendant Garfield Preleau and William Robinson, colored, were in William Robinson's automobile, that the defendant Garfield Preleau and William Robinson did not actually participate in the taking of the automobile or the whiskey; that before the hold-up witness and Bernard Stewart and William Thomas and Garfield Preleau and John Jackson and William Robinson had been driving all over town in William Robinson's automobile, looking for a whiskey man to hold up; that after the automobile had been abandoned they sold the whiskey and divided the money; that defendant Garfield Preleau got one hundred and ten dollars.

On cross-examination the witness stated that Garfield Preleau did not actually participate in the hold-up.

JOSEPH GRANT, white, member of the Metropolitan Police Force, called as a witness on behalf of the United States, testified in
30 substance as follows:

That at about eleven or eleven-thirty o'clock A. M. June 7, 1919, he and Officer Frank M. Alligood arrested the defendant Garfield Preleau and the witness William Robinson, on Tenth Street Northwest; that at the time of the arrest the defendant Preleau and

William Robinson were in an automobile which had red wheels; that they searched the automobile and found therein two revolvers; that one of these revolvers was claimed by William Robinson, and that the defendant Garfield Preleau stated that he owned the other revolver; that defendant Preleau and Robinson were taken to Police Headquarters; that defendant Preleau and William Robinson at first denied knowing anything at all about the hold-up but that later the defendant Preleau and the witness Robinson were searched; that \$110.00 was found on defendant Preleau, and that about \$135.00 was found on the witness William Robinson, and that then the defendant Preleau made a written statement. The witness thereupon identified a paper writing purporting to be a statement of Garfield Preleau, which was thereupon read to the jury, said statement being as follows:

"Statement of Garfield Preleau.

I make this statement of my own free will.

I met 'Ackey'—William Robinson, on 7th St. and Fla. Ave. NW—told him to go down southwest and pull my car in, from 2nd & H, SW, in Robinson's automobile then towed my car to Bensinger's garage on 6th St. NW. between C and D Sts., NW. put the car in the garage.

Robinson and myself, then went back southwest in Robinson's car, down 3rd St. SW.——

We met at 3rd & H Sts. SW—Eddie Thomas, and 'Knotty'—Bernard Stewart and two other boys.

When another automobile loaded with some other boys, driven by Brammell I then with Eddie Thomas, and 'Knotty', Bernard Stewart, went to 3rd and C Sts. SW.

31 "Knotty said 'Tut' come on and go with me.

'Tut'—William Thomas, got in the auto we all went to 7th & Fla. ave., NW. when Henry Johnson got out. We all went to 15th & H Sts., NE. looking out for liquor car from Balto. Md.

'Cockey', meaning Robinson, told them he knew, when a whiskey car came every morning.

We all then drove car to Franklin St. NW. near N. J. Ave. NW. We waited until automobile, with the liquor showed up, when Cockey said here comes the man with the liquor now.

When Eddie Thomas, 'Knotty' meaning Bernard Stewart,—'Tut', meaning William Thomas, went up in Franklin St.—Cockey meaning William Robinson, drove automobile down Franklin St. toward 5th St.—I stood at a corner—knowing the hold-up was coming off.

After the holdup, I met Robinson and another boy, do not know his name, at N. J. Ave. and Franklin Sts., we got in Robinson's car, and went to Del. Ave. and K St. SW. where we met—Tut, meaning William Thomas,—Knotty, meaning Bernard Stewart, Eddie Thomas and one other boy I did not know.

We all went to Lillie King's house, on 1st St. SW.—all seven of the boys were there.

I and William Thomas stayed at Lillie King's house, with another boy, did not know his name.

Robinson,—Eddie Thomas, Bernard Stewart, and another boy, left to sell the whiskey in an automobile,—sold to a man named Perry Robinson, on H St. between 3rd and 4½ Sts., SW., sold him 5 cases of whiskey. They then came back and took away six cases of whiskey.

They took all away the last trip.

William Robinson gave me \$110.00 in money while standing in front of 322 Willow Tree Alley SW. when Eddie Thomas, Stewart, Robinson, William Thomas, and the two other boys, went from Lillie King's house, Robinson said this money was given me to keep myself.

32

June 9" 1919.

GARFIELD PRIOLEAU.

Witness:

W. O. EMBREY.

J. E. GRANT.

H. M. VERMILLION.

E. T. HARNEY."

To the reading of the alleged confession of defendant Preleau counsel for the defendant objected, stating that the alleged confession was forced from the defendant Preleau by "cuffing and beating him."

Whereupon the witness testified that the defendant was not beaten or cuffed; that there were no threats made against the defendant nor any promises made to him, but that the defendant voluntarily confessed when the money was found on him. Whereupon the Court overruled the objection to the reading of the alleged confession, to which action of the Court the defendant duly noted an exception.

Upon cross-examination, witness testified that he himself was not present at the hold-up and knew nothing of his own knowledge of the taking of the automobile. He further denied that the defendant had been cuffed or beaten or mistreated in his presence.

FRANK M. ALLIGOOD, white, member of the Metropolitan Police Force, called as a witness on behalf of the United States, testified in substance as follows:

That he was present with Officer Joseph H. Grant when the defendant Garfield Preleau and the witness William Robinson were arrested; that they were in Robinson's automobile at the time; that the automobile had red wheels; that there were found in the automobile two revolvers, one of which was claimed by William Robinson and the other of which was claimed by the defendant Garfield Preleau.

Upon cross-examination, the witness testified that he knew nothing of his own personal knowledge of the hold-up.

WARREN O. EMBREY, white, member of Metropolitan Police Force, called as a witness on behalf of the United States, testified in substance as follows:

33 That he was present at Detective Headquarters when the defendant Garfield Preleau made the statement identified by the witness Joseph E. Grant; that the statement was voluntarily made, and that the defendant was not beaten or threatened.

Upon cross-examination this witness testified that he knew nothing of his own personal knowledge of the hold-up.

HOWARD M. VERMILLION, white, member of Metropolitan Police force, called as a witness on behalf of the United States, testified in substance as follows:

That he also was present at the time that the defendant Garfield Preleau made the statement identified by witness Joseph E. Grant; that the statement was made voluntarily by the defendant Garfield Preleau; that the defendant was not beaten or cuffed or threatened.

Upon cross-examination witness testified that he knew nothing of his own personal knowledge of the facts of the hold-up.

Whereupon, to maintain the issues on his part joined, the defendant Garfield Preleau called the following witnesses:

HENRY JOHNSON, colored, called as witness on behalf of defendant, testified in substance as follows:

That about three o'clock P. M. on June 6, 1919, he was in Garfield Preleau's automobile when the automobile took fire at the corner of Second and H Streets, Southwest; that they left the automobile there in a damaged condition and went to hire someone to tow it to a garage; that they went to Seventh Street and Florida Avenue, Northwest, and there met the witness William Robinson, and that the defendant Garfield Preleau asked Robinson to go down Southwest and tow the automobile to a garage; that defendant Garfield Preleau and the witness got in the automobile with Robinson, and
34 that when they got into the Southwest, at about Third and H Streets, Southwest, they met Bernard Stewart and William Thomas and Edward Thomas and John Jackson; that these four men got into Robinson's automobile; that Bernard Stewart said he would give William Robinson twenty-five dollars to drive them around that night; that the automobile started northward; that when it reached Pennsylvania Avenue witness got out, and that he knows nothing else about the case.

Upon cross-examination, witness testified that he did not see Bernard Stewart give William Robinson any money, and that he did not know what they wanted the automobile for.

GARFIELD PRELEAU, colored, the defendant, took the stand in his own behalf, and testified in substance as follows:

That his automobile caught on fire at Second and H Streets, Southwest, on June 6, 1919; that he left it to hunt a man to tow it to a repair shop; that he met William Robinson at Seventh Street and Florida Avenue, Northwest, and hired him to tow the car in for three dollars to the repair shop of Carey Davis on Louisiana Avenue, Northwest; that on their way to get his car four boys, Bernard Stewart, William Thomas, Edward Thomas and John Jackson, met them, and hired Robinson and his car to drive them around that night; that he took them and drove them around and until five o'clock next morning; and that Robinson took them to Franklin Street and then the four boys got out, and left defendant and Robinson in the car; that when the four boys did not return, Robinson got out and went to hunt for them, leaving defendant in the car; that when Robinson returned he found defendant sleeping, and that he waked defendant, and that Robinson and defendant went in the car down to Southwest Washington to hunt for the four boys; that they found the four boys, and they paid Robinson; that Robinson then got defendant's
35 car and took it to Davis's repair — on Louisiana Avenue; that on the way home from the shop two detectives stopped them and arrested them on this charge of stealing Mr. Godfrey's automobile; that he denied knowing anything about the automobile or the owner or the money which they said was stolen; that the detectives and the policemen at the station beat and cuffed him to make him confess to the stealing of said automobile, which he was not guilty of.

Upon cross-examination, the defendant admitted that he had signed the paper writing purporting to be a confession offered by the Government, but said that he did not make the statements contained therein; he denied that he owned either of the revolvers that were taken from Robinson's automobile at the time that he and Robinson were arrested; that the money that was found on him by the police officers, about one hundred and thirty-seven dollars and sixty cents, had been given to him by his father, A. P. Prioleau, partly on the twentieth day of May and partly on the first day of June; that his father had given him this money to deposit in the United States Savings Bank to take up his note on the automobile; that after the hold-up he went down to Lillie King's house with Robinson, but that he did not go in the house, and that he never got any money from the four boys, Bernard Stewart, William Thomas, Edward Thomas or John Jackson.

Whereupon the defendant rested; and the within and the foregoing is the substance of all the testimony and all the evidence offered by the parties.

36 And thereupon, after the above exceptions were taken, such exceptions being taken in the presence of the jury and before they retired to consider their verdict, and were entered upon the minutes of the Court, counsel for the defendant prayed the Court to

sign this his bill of exceptions, which is accordingly done this 17th day of March, A. D. 1920, nunc pro tunc.

WENDELL P. STAFFORD,
Justice.

37 [Endorsed:] Criminal No. 35394. United States vs. Garfield Prioleau. Bill of Exceptions. Jacob Moorner, A. P. Prioleau, Attorney and Guardian for Defendant, for the Defendant.

Endorsed on cover: District of Columbia Supreme Court. No. 3400. Garfield Preleau, appellant, vs. The United States. Court of Appeals, District of Columbia. Filed May 10, 1920. Henry W. Hodges, clerk.

(1874)

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1920.

No. 3400.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

DEC 27 1920

Henry W. Hodges
Chlor

GARFIELD PRIOLEAU, APPELLANT,

vs.

UNITED STATES, APPELLEE.

**Supplemental Brief for Appellant Upon the
Authority of Rule of Law and the Fact Upon
Which He Relied Upon to Establish His
Cause of Appeal.**

THOS. BECKETT,
JACOB MOORER,
A. P. PRIOLEAU,
GEO. W. HALL,
WELDEN JOHNSON,
*Attorneys for the Appellant and
Guardian.*

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1920.

No. 3400.

GARFIELD PRIOLEAU, APPELLANT,

vs.

UNITED STATES, APPELLEE.

**Supplemental Brief for Appellant Upon the
Authority of Rule of Law and the Fact
Upon Which He Relied Upon to Establish
His Cause of Appeal.**

Statement of the Case.

The appellant respectfully herein presents and shows that at the April term of the Supreme Court of the District of Columbia, United States of America, the appellant and one Barnard Steward, one William Thomas, one Edward Thomas and one John Jackson, were jointly indicted upon an alleged charge of robbery under the criminal Code of Law of the District of Columbia, Sec. 810, and thereafter, to wit, on the thirteenth day of January, 1920, at a term of the said court, held in the city of Washington, D. C., the said appellant and the other defendants heretofore named. Trial came on and the said appellant plead not guilty to the said indictment, and that is the codefendants plead guilty thereto and thereupon the said appellant motions

the court, by his attorney, to quash the said indictment upon the ground that the said grand jury who returned the said bill of indictment was not the peer or equal of the said appellant. And that a trial came on upon said indictment would deny and deprive the said appellant of his rights and privileges in violation of the fifth, sixth, and eighth article and the Fourteenth Amendment of the Constitution of the United States.

Which motion, after argument of the appellant's attorney, was overruled; thereupon the said appellant being arraigned upon the said indictment, the reading thereof was specially waived, and before the jury selected was sworn filed a motion to quash the indictment, with affidavits thereto, upon the ground that the jury selected and formed to try the said appellant, together with the grand jury who found the bill of indictment, were not his, the appellant's peers. And that he does not believe that he would get a fair and a partial trial by due process of law as guaranteed to the said appellant by the United States Constitution, all of which was overruled by the court in violation of the said appellant's right under the aforesaid Constitution. The said motion was supported by affidavits filed in open court. The appellant was thereupon tried upon the said indictment and the said selected juries returned a verdict of guilty as to the first account and not guilty to the second account. This conviction was upon the charge of robbery of an automobile alleged in the said indictment to be valued at thirty-two hundred dollars, the property of John W. Godfrey, the prosecutor, who at the trial identified the two defendants, William and Edward Thomas, as being two of four men that robbed him of his car and that the appellant was not there at the robbery. And that he saw his automobile that was abandoned and was received and in the hands of the policemen, not having been damaged or sold.

Whereupon it was considered by the said court that the appellant goes thereof without day as to the second account and thereupon the court increases the amount of bail from two thousand dollars to ten thousand dollars. Thereupon the appellant files a motion for a new trial supported by affidavits, upon the following grounds: that the jury erred in finding the appellant guilty. For neither the prosecuting witness, Godfrey, nor any of the Government's witnesses, testified or claimed that the appellant was near the car that had said to have been taken, as alleged in the indictment upon either of the accounts that the appellants were tried upon and that the judge was asked to charge the jury upon these facts, but he refused.

Third and fourth grounds: That the said verdict was contrary to the evidence and the law and fact presented at said trial, and that the court erred by refusing to quash the indictment and to instruct the jury on the law and to find a verdict for the appellant and acquitting the same. Fifth and sixth: That the appellant was denied and deprived of his rights and privileges under the fifth article of the Federal Constitution and the Fourteenth Amendment thereto as to a trial by a jury of his peers, or his equals. And that the appellant had discovered new evidence that would show that charges alleged in his affidavit that there was conspiracy conspired by prejudices and other causes placed against him by certain officers of the detectives and the police department to incarcerate the said appellant and they beat and abused him in prison, and that the refusal of the court to accept the two thousand dollars bail that was already given until the new trial or the appeal, effected and increased the said bond to ten thousand dollars, showed the intention of the court, to impose an unreasonable bail upon the appellant to hold him in prison, all of which was presented to the court upon the

new trial supported by affidavit, but the court overruled said motion and sentenced the said appellant to be taken to the jail in Washington, D. C., thence to the penitentiary by the order of the Attorney General of the United States, there to be confined for the period of ten years. Thereupon the appellant by his attorney noted an appeal to the Court of Appeals for the District of Columbia. (See record page, first to nine, inclusive.)

Thereupon in all right and respect we most respectfully represent to this Honorable Court the rules of laws and the facts upon the errors assigned, and the fundamental principle of righteousness and justice, that having been denied to this appellant which is in violation of his respective rights, which he relied upon to establish his case before the respected court that will show that the said appellant was convicted without due process of law and that the said appellants are now held in prison in the United States penitentiary at Atlanta, Ga., unlawfully and in violation of the rule of law of this honorable court.

No. 1 Proposition of Facts and the Facts Assigned Upon Errors.

Errors numbers 1 and 2, in all right and respect, the fact that there was no plea or denial or demurrer controverting the allegation of the affidavits, were filed upon the motion to quash the grand jury indictment and thereafter to quash the said indictment before the selected petit jury that was formed to try the said appellant was sworn and that the said same fact contained in the motion an affidavit filed in open court upon the new trial that no plea, demurrer or denial were filed by the Government controverting any of the allegation of the said matters and things filed therefor, thereupon under

the rules of laws there is no issue but the facts alleged therein is admitted.

See *White vs. Emblem*, 28 S. E., 761, 762.

See *Seler vs. Jikins*, 97 Ind., 430 and 438.

See *Riggs vs. Chapin*, 7th New York Supp., 765-7.

Proposition of Rules of Laws and Facts Upon Errors Assigned No. 2.

The United States having appeared upon the hearing of the appellant's petition, affidavits and motions in the Supreme Court in the District of Columbia and filed no demurrer, plea or answer, the appellant was entitled to a judgment *nil dieit*. See *Cregg vs. Guilmer*, 54 Ala., 425-30. See *Simons vs. Fitch*, 802 Ala., 317. See *Washington County vs. Porter*, 828, Ala., 828-278.

Propositions of Rules of Law and the Facts Upon Errors Assigned No. 3.

In the absence of all evidence pending to controvert the averment of petition, motion and affidavits, thereupon the Supreme Court of the District of Columbia was without authority to render a judgment overruling any such matter that was so filed and undenied by the Government. See *Adams vs. State*, 162 Ala., 74; *Walker vs. State*, 86, So. Reporter, 257; *U. S. vs. Brockly*, 266 Federal, 1001, Fed. Ad. Sheet No. 11.

Proposition of Rules of Laws and the Facts Upon Errors Assigned No. 4.

In the federal court the trial of crime must be by an impartial jury and the jury which the Constitution prescribes for the trial of crime must, as at the common law, consist of jurors the equal and the peer of the appellant. See *Watson upon the United States Constitution*, pages 1141-42, upon the qualification of jurors. He said the great principle secured by the

baron from John so far as trial by jury was concerned was the separation of a judge and the jury and the finding of guilt or innocence of the accused by a verdict of a jury made up of his equals, which mean his peers. See U. S. Supreme Court in the *Neal vs. Del.*, 113 U. S., 370, which upheld the question raised in this cause. See 1135, *Watson upon the U. S. Con., Ex parte McClusky*, this learned judge laid down the broadest legal principle upon the grand juries indictment in all right and respect. First he said no person has the right to surrender his liberty in violation of a fundamental right secured for him for the protection of the liberty of such persons by the Fifth and Fourteenth Amendments to the United States Constitution. A party can not waive a constitutional right when its effect is to give the court jurisdiction. The liberty of citizens is a donation of the Great Creator and can not be taken by persons upon their own authority, even with the consent of the citizens whose liberty is taken, but it must be taken by due process of law and none of the fundamental requisites to the proceedings which make up the due process of law can be so waived as to deprive the person whose liberty is taken from him of afterwards resorting to legal means to obtain his liberty. See *Authority Rule of Law*, Sec. 117, U. S., 348; *Perkinson vs. U. S.*, 121 U. S., 281; *Ex parte Wilson*, 114 U. S., 417-29 page.

The facts as shown in the record of this case of the unlawful action of the detectives and police that they arrested the appellant five different times previous to this case, and falsely imprisoned him, and while so imprisoned they beat, threatened and cuffed the said appellant to force him to sign statements of confession for crime that he had not committed and that upon one of these cases one of the Metropolitan police swore out a warrant charging the appellant with attempting to murder him, under a false pretense to get the appel-

lant back in prison while the appellant was out on bail in this case and to get Dr. William Steward, the appellant's bondsman to acquit his bond and that he, Dr. Steward, did quit the bond and afterwards this case was thrown out by the grand jury, and this appellant was held in prison in the District of Columbia since, until they speeded him away to the Atlanta Penitentiary, and these are the same officials that arrested the appellant in this case. They beat, threatened and cuffed him to force him to sign a statement, written and purported by them as the confession of the said appellant (See Record, p. 9, Sec. 15) which if at all was secured it was a case of duress pure and simple. Upon the robbery of a thirty-two hundred dollar Cole automobile of the said Godfrey, the prosecutor, and nineteen cases of whisky and six hundred dollars, of which these officials falsely stated in their testimony that they found a hundred and ten dollars upon the appellant when they searched him, as shown in the record (see pages 17 to 19), but in all respects the testimony of the appellant (see p. 21) contradicting this amount of money, also the record of the property clerk, E. B. Hesse, District Building, and he giving a full statement of the burning of his automobile at Second and H Sts. S. W., on June the sixth, 1919, and the hiring of William Robinson and his automobile to tow the appellant's automobile to Carry and Davis shop N. W., and shown the four defendants named in the indictment meet Robinson and the appellant in Robinson's automobile, that the appellant had hired, and hired Robinson to take them around for twenty-five dollars that night, and shows that Robinson and the appellant was left in his auto by the four defendants who were two of the defendants that plead guilty to the charge, and name the other two defendants that had not been apprehended as the two persons who helped them to steal the auto. And that the appellants and

Robinson remained in the car during the time it was hired by these defendants and that at Franklin St. N. W., about five o'clock the morning of the seventh of June, these defendants told Robinson to stop his car and they left the car, leaving the appellant and Robinson in the Robinson car. When the four defendants did not return, Robinson left the car to hunt them and when Robinson returned to his car he found the appellant sleeping. The testimony of the appellant, William Robinson, the owner ~~of the~~ auto, that he had hired for three dollars, the testimony of Godfrey, the prosecutor, George White, who was in the Godfrey car with him when it was stolen from him the two defendants, that was tried and plead guilty, each of them were Government witnesses corroborated the fact that they said appellant was not at the robbery and that he had no part whatever in the robbery in the automobile nor whisky that the applicant was at the time was in the Robinson's automobile sleeping (see Rec., pages 14 to 17, inclusive).

Fifth Proposition Upon Errors Assigned Upon Rules of Law and Facts.

The record of the property clerk, Hesse, of the District Building, will show that no hundred and ten dollars was returned upon his books by any of the officials of the Metropolitan Police Department; that the testimony and statement presented at the trial was unlawfully made by these officials and purported to be made by the said ~~officials~~ *appellant* to secure his conviction, and to have him sent to the penitentiary. By the testimony claiming they had found in possession of the appellants \$110 of the stolen property, just to implicate him in the said robbery with the other four defendants who were eye-witnesses that was at the robbery testified that they, the defendants, did the robbery. They arrested William

Robinson, in his auto, that was described along with the appellant. Robinson was at the robbery as shown by his evidence but he was excepted from being prosecuted by these officers. But they holding this appellant in the said robbery, but in all rights and respects they must fail for the fact that no whisky nor money was alleged in the indictment; thereupon it can not under the rule of law be now joined to this indictment of the robbery of the automobile. The appellant further herein contends that the court did err upon the ~~errors~~ of law and *rules* fact, to wit: that it is already shown in the indictment that the appellant was charged jointly with four other defendants upon the crime of robbery, an automobile, the value of thirty-two hundred dollars, in the said indictment and there was no whisky or money was in any of the allegations of the indictment. And it is indisputable by the Government that this appellant was not connected in any way in the robbery of the said automobile which is corroborated by the prosecutor and witness for the Government; also the fact that the prosecutor recovered his Cole automobile that was named in the indictment not having been damaged or sold, shows conclusively that there was no sale made of the said automobile by the appellant for him to have received any money from it. This shows why the police and detectives dragged into this case whisky and money at the trial that was not joined in the indictment, which is an estoppel under the fundamental principle of criminal law (see *People vs. Molenett*, 168 New York, 293; U. S. Con., article five. page forty, U. S. Con. amendment 14, page 47. Upon all criminal procedure see 833, 2 East PC. C., 707, Roscoe, the learned criminal counsel upon what constitutes robbery. He lays down the principle that there must be a possession of the stolen goods to prove robbery and to be taken by force and otherwise, by fair and being present.

Therefore upon the foregoing full statement of this cause and the rules of law and the facts involved in premises together with the grave conspiracy shown in the record and the denial and the privation of the rights of the appellant granted to him by the Federal Constitution and laws thereunder that were violated in the trial court, and the unlawful action of the said officials to speed away the said appellant to the Atlanta Penitentiary while an appeal in this case was in effect in this court, appeal to be heard and the unreasonable excessive raise of bail by the court from two thousand dollars to ten thousand dollars, which is believed was meant to stop the appellant from procuring a bond as in fact shown in the record, there was no evidence given at the trial to convict the appellant shows that the court in refusing the motion for the arrest of judgment erred. And the refusal of the court to instruct the jury to find a verdict of not guilty for the appellant, as the evidence was contrary to the rules of law, shows that the court also erred.

While it is in all respects a judicial and just duty given to the court by the general rules of law upon all judgments however, conclusive in its character or under the control of the court which pronounce them during the term at which they were rendered and may set aside modified or vacated by the court. See authority, *Brinson vs. Schutten*, 104 U. S., 410; *Cancemi vs. People*, *supt.*

The finding of a trial court below is not conclusive in this court if it appears that there was no evidence to support it, the court being acting in all respects in place of the U. S. Supreme Court should grant the redress demanded. See *Postal Tel. Co. vs. Newport*, C. 247, U. S., 464, 473; *Carlson vs. Curtis*, 234 U. S., 103-106.

In conclusion we most respectfully *submit* with all

due respect to this Honorable Court a supplemental brief of a comprehensive and conclusive presentation of the rules of law and the facts involved upon the matters and things shown in the record of this case, which shows conclusively the grave prejudice and combination of conspiracy in the case, and the open violation of the rule of law and the fact as shown in the record upon error assigned. Thereupon the appeal in this cause all of which tending in all due respect to deny and deprive the said appellant of his rights and privileges in open violation of the Federal Constitution and laws therein by speeding away the said appellant to U. S. prison from the jurisdiction of the appellant courts without a hearing upon his appeal and refusing to grant this appellant a reasonable bail.

Therefore, we pray that this Honorable Court will reverse the action of the court and judgment below and grant the appellant a new trial or any other relief or remedy that the court might seem right and just.

THOS. BECKETT,
JACOB MOORER,
A. P. PRIOLEAU,
GEO. W. HALL,
WELDEN JOHNSON,

*Attorneys for the Appellant and
Guardian.*